BEFORE THE PUBLIC UTILITIES COMMISSION OF THE

STATE OF HAWAII

In the Matter of PUBLIC UTILITIES COMMISSION Instituting a Proceeding to Investigate the Implementation Of Feed–in Tariffs.	DOCKET NO. 2008-0273

REPLY BRIEF OF BLUE PLANET FOUNDATION

AND

CERTIFICATE OF SERVICE

SCHLACK ITO LOCKWOOD PIPER & ELKIND
Douglas A. Codiga, Esq.
Topa Financial Center
745 Fort Street, Suite 1500
Honolulu, Hawaii 96813
Tel. (808) 523-6040

Attorney for Blue Planet Foundation

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Blue Planet Foundation ("Blue Planet"), by and through its attorneys Schlack Ito Lockwood Piper & Elkind, hereby respectfully submits its Reply Brief in support of its Opening Brief filed June 12, 2009 ("Opening Brief") and its position in this proceeding to investigate the implementation of feed-in tariffs ("FIT").[1]

I. INTRODUCTION

Blue Planet's Opening Brief identifies the fundamental issue before the Commission as whether and to what extent Hawaii will use FITs to "move more decisively and irreversibly away from imported fossil fuel for electricity and transportation and towards indigenously produced renewable energy," given the challenges associated with Hawaii's dependence on imported oil and the opportunities presented by Hawaii's swift transition to a clean energy economy.[2] A robust FIT, capable of securing the rapid adoption of the maximum feasible amount of renewable energy, is a reasonable and appropriate method to address these profound challenges and opportunities regarding Hawaii's energy future.

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[1] Blue Planet's Reply Brief is timely filed in accordance with the June 26, 2009 due date established by the Commission's letter to the parties dated May 21, 2009. *Id.* at 2.

[2] *Energy Agreement Among the State of Hawaii, Division of Consumer Advocacy of the Department of Commerce and Consumer Affairs, and the Hawaiian Electric Companies* dated Oct. 20, 2008 at 1 ("Energy Agreement").

The Opening Brief filed by the HECO Companies[3] and Consumer Advocate[4] on June 12, 2009 ("HECO Opening Brief") does not discuss the challenges to Hawaii's energy future stemming from the state's dangerous over-reliance on imported oil for transportation and electricity production. Nearly 77% of the state's electricity and about 95% of its transportation fuels are produced from petroleum. State of Hawaii Energy Resources Coordinator Annual Report (2008) at 1.[5] The parties to the Energy Agreement[6] have affirmed that "[t]he very future of our land, our economy and our quality of life is at risk" if Hawaii's dangerous dependence on imported oil is not alleviated. Energy Agreement at 1 (emphasis added). The State Legislature has found:

> The global demand for petroleum and its derivatives has caused severe economic hardships throughout the State and threatens to impair the public health, safety and welfare. The State of Hawaii, with its total dependence on imported fossil fuel, is particularly vulnerable to dislocations in the global energy market.

Haw. Rev. Stat. § 196-1(1) (emphasis added); *see also* 2008 Haw. Sess. Laws, Act 208 at § 1 (Hawaii's "high petroleum dependence makes consumers extremely vulnerable to any oil embargo, supply disruption, international market dysfunction, and many other factors beyond Hawaii's control") (emphasis added).

In enacting H.B. No. 1464, H.D. 3, S.D. 2, C.D. 1, which was signed into law by Governor Lingle on June 25, 2009 as Act 155 ("Act 155"),[7] the State Legislature recently affirmed that "[a]ttaining independence from our detrimental reliance on fossil fuels has been a

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[3] Hawaiian Electric Company, Inc., Maui Electric Company, Limited, and Hawaii Electric Light Company, Inc.
[4] State of Hawaii Division of Consumer Advocacy of the Department of Commerce and Consumer Affairs. For the sake of convenience, the HECO Companies and Consumer Advocate are referred to herein collectively as the HECO Companies, as may be appropriate.
[5] Available at http://hawaii.gov/dbedt/info/energy/publications/erc08.pdf.
[6] "Energy Agreement Among the State of Hawaii, Division of Consumer Advocacy of the Department of Commerce and Consumer Affairs, and the Hawaiian Electric Companies" dated Oct. 20, 2008 ("Energy Agreement").
[7] 2009 Sess. Laws Act 155.

long-standing objective for the State. Hawaii is the state most dependent on petroleum for its energy needs. It pays the highest electricity prices in the United States [and its] energy costs approach eleven percent of its gross domestic product, whereas in most states energy costs are four percent of gross domestic product. . . . Reducing our oil dependence and the consequent price volatility and attaining energy security are critical. More than ninety-six percent of petroleum in Hawaii now comes from foreign sources." *Id.* at § 1.

Nor does the HECO Opening Brief discuss the equally significant economic and environmental opportunities from a clean energy economy in Hawaii. In particular, a robust FIT should result in lower energy costs to ratepayers in the long run; as the Energy Agreement has concluded, "the benefits to Hawaii from using a feed-in tariff to accelerate renewable energy development (from lowering oil imports, increasing energy security, and increasing both jobs and tax base for the state), exceed the potential incremental rents paid to the renewable providers in the short term." Energy Agreement at 16-17. Act 155 affirms that the Hawaii Clean Energy Initiative ("HCEI") seeks to "[c]apture the economic benefits of clean energy for all levels of society" and "[b]uild the workforce of the future." *Id.* at § 1. The HCEI MOU[8] contemplates "significant . . . economic growth opportunities." *Id.* at 1 (emphasis added). One of an FIT's "key goals" is to "build the workforce with crosscutting skills to enable and support a clean energy economy." *Id.* (emphasis added). Rather than focus on the profound challenges and opportunities regarding to Hawaii's energy future, the HECO Opening Brief largely restates its prior submissions in support of the Joint Proposal[9] and Straw Tariff.[10]

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[8] *Memorandum of Understanding Between the State of Hawaii and the U.S. Department of Energy* dated Jan. 28, 2008 ("HCEI MOU").

[9] "Joint Proposal on Feed-in Tariffs of the HECO Companies and Consumer Advocate" dated Dec. 23, 2008 ("Joint Proposal").

[10] On January 15, 2009, HECO distributed draft versions of its proposed Schedule FIT Tariff, Schedule FIT Agreement (Appendix I), Schedule FIT Overview (Appendix II), and Schedule FIT Program Overview (Appendix

As Blue Planet has affirmed in this proceeding, its vision is one of diverse parties uniting around a common goal: Hawaii's swift transition to a clean energy economy. That goal cannot be achieved without a stable electric grid and financially sound utility. Blue Planet acknowledges the demands placed upon the HECO Companies by the proposed implementation of an FIT in Hawaii and various other Energy Agreement commitments, and supports and appreciates the HECO Companies' good faith efforts to fulfill their obligations in that regard. At the same time, to aid the Commission in reaching a sound decision in this proceeding Blue Planet is compelled to point out several important arguments, advanced by the HECO Companies in support of their positions on the issues, which simply do not withstand scrutiny.

For example, the HECO Companies do not occupy the "middle ground" in this proceeding. The HECO Companies state in the Introduction to their Opening Brief:

> There is also a middle ground. When confronted with uncertainty, this course seeks to balance the need for progress with consideration of the need to understand the road ahead. Rather than remain at the starting line or rush headlong into an unforeseen void, this course takes firm steps toward a goal with full recognition that adjustments will need to be made along the way as more and better information is secured. This is the course that the HECO Companies and Consumer Advocate have taken with their jointly proposed FIT.

HECO Opening Brief at 2 (emphasis added).

The HECO Companies do not occupy the "middle ground" because their Joint Proposal and Straw Tariff[11] propose replacement of the successful Net Energy Metering

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III) to the intervenor parties in "straw format" ("Straw Tariff"). E-mail from M. Chun (HECO) to Intervenor Parties dated Jan. 15, 2009.

[11] Blue Planet has regularly employed the term "Proposed FIT" to describe the feed-in tariff accompanying its submissions to the Commission in this proceeding and "Straw Tariff" to describe the FIT submitted by the HECO Companies. *See* Blue Planet Foundation's Initial Statement of Position and Proposed Feed-in Tariff filed Feb. 25, 2009; Blue Planet Foundation's Final Statement of Position and Proposed Feed-in Tariff filed March 30, 2009. The Proposed FIT is the product of several intervenor parties over the course of this proceeding. It appears that the HECO Companies' Opening Brief for the first time employs the term "Proposed FIT" to describe the Straw Tariff. To minimize confusion, this Reply Brief continues to use the term "Straw Tariff" for the HECO Companies' tariff.

("NEM") program[12] with an FIT the HECO Companies estimate will generate less than 12 megawatts ("MW") per year on Oahu.[13] In terms of increased system penetration of renewable energy, the middle ground likely lies between the HECO Companies' estimate of replacing the NEM program with less than 12 MW annually of renewable energy on Oahu, and the estimate of 122.5 MW annually Statewide from an FIT proposed by intervenor parties.[14] In the face of Hawaii's dangerous dependence on imported oil and the promise of economic revitalization from the State's swift transition to a clean energy economy, a proposal to replace the NEM program with less than 12 MW of renewable energy each year from an FIT on Oahu is a essentially a proposal to "remain at the starting line." It cannot reasonably be considered to be the "middle ground" in this proceeding.

Nor may it credibly be asserted at this stage of the proceeding that the Commission or any party seeks to "rush headlong into an unforeseen void," *id.*, given the numerous written submissions, five-day panel hearing, technical meetings, settlement discussions, and pending procedures and further submissions in this matter. The record demonstrates careful, reasoned consideration of the issues by the parties and does not support the HECO Companies' assertions to the contrary, which serve only to distract from the serious issues confronting the Commission in adopting an FIT in Hawaii.

The purpose of this Reply Brief is therefore to return the Commission's attention to the fundamental and substantive energy policy objectives guiding this proceeding. These

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[12] The Joint Proposal proposes no new NEM applications and no expansion of NEM capacity. *Id*.at 15. Although the HECO Opening Brief proposes that the NEM program continue to be offered until an FIT update is completed two years after FIT implementation, this proposal is qualified by a footnote reserving the HECO Companies "individual and collective rights to appropriately modify the [FIT adopted by the Commission] to account for the continuation of any aspects of the NEM program." HECO Opening Brief at 12 n. 4. This reservation suggests the HECO Companies continue to view the FIT program as a replacement for the NEM program, and vice versa, a view that is consistent with their initial position set forth in the Joint Proposal.

[13] *See* HECO Companies' response to PUC-IR-34 at 2 ("annual targets" on Oahu for first two years of FIT could total 23.5 MW, or 11.75 MW per year).

[14] *See* Opening Brief and Proposal for Feed-in Tariff of Zero Emissions Leasing, LLC filed June 12, 2009 at 10.

objectives are established by State law and major policy pronouncements, including the Energy Agreement. Blue Planet respectfully submits that by adopting an FIT consistent with these policy objectives, the Commission may ensure that its decision is founded on sound law and policy as well as supported by the evidentiary record in this proceeding.

II. THE COMMISSION SHOULD ADOPT GENERAL PRINCIPLES BASED UPON THE FEED-IN TARIFF POLICY OBJECTIVES.

A. Feed-in Tariff Policy Objectives Establish Decision-Making Criteria for the Commission's Decisions on General Principles.

Commission decisions on general principles governing the FIT should be made by reference to reasonable and justifiable criteria. Such criteria are found in the economic and environmental policy objectives associated with the adoption of an FIT in Hawaii, as set forth in the Energy Agreement and related State and federal energy law and policy documents ("FIT Policy Objectives"). The FIT Policy Objectives establish decision-making criteria for the commission's decisions on general principles.

As more fully explained in its Opening Brief, the Commission should adopt general principles that are most likely to achieve the rapid adoption of the maximum feasible amount of renewable energy in Hawaii ("Rapid Adoption Objective"). A primary reason for achieving the Rapid Adoption Objective by means of an FIT is to provide ratepayers with the cost savings associated with FITs. The Commission should therefore adopt general principles that are most likely to achieve, to the extent reasonably possible, such cost savings for ratepayers ("Ratepayer Benefit Objective"). The Commission should similarly adopt general principles and an FIT that is most likely to stimulate the greatest increase in employment in Hawaii related to achievement of the Rapid Adoption Objective ("Job Growth Objective").

In addition, the Commission should adopt general principles and an FIT that are most likely to provide the requisite security and support for renewable energy generators – and

their investors – to achieve the Rapid Adoption Objectives ("Generator Security Objective"), the rapid improvement of the electric utilities' grid systems to accommodate and support achievement of the Rapid Adoption Objective ("Grid Improvement Objective"), and that are likely to establish Hawaii as a global leader in creating a clean energy economy ("Global Leader Objective"). As Act 155 affirms, a goal of the HCEI is to "[s]erve as a national model." *Id.* at § 1.

B. General Principle: The Purpose of the FIT Is To Achieve the FIT Policy Objectives (i.e., the Rapid Adoption, Ratepayer Benefit, Job Growth, Generator Security, Grid Improvement, and Global Leader Objectives).

It is reasonable for the Commission to conclude that the purpose of an FIT in Hawaii is to achieve the above-described FIT Policy Objectives. Regulatory policies, such as an FIT, are adopted to achieve certain objectives. Absent specific objectives, regulatory policies may lack a sound basis for development and implementation. The FIT Policy Objectives are derived from State law, the HCEI MOU, the Energy Agreement, and related authoritative sources. The FIT Policy Objectives provide a sound basis for Commission decisions and action in this proceeding.

Shifting the focus from well-established FIT Policy Objectives, the HECO Companies suggest:

> While it is an important overall goal, a Hawaii FIT should not focus only on maximizing system penetration of new renewable energy resources. A Hawaii FIT must equally consider the need to maintain system security and reliability, power quality and mitigate undesirable financial impacts to ratepayers.

Id. at 4 (emphasis added).

Several key assertions in this statement do not withstand scrutiny. It is axiomatic that the purpose of an FIT is to achieve what Blue Planet has termed the Rapid Adoption Objective. *See* Opening Brief at 8-11. In Hawaii, achievement of the Rapid Adoption Objective

is required and supported by State law and policy, including the Energy Agreement. Achievement of the Rapid Adoption Objective is the hallmark of an FIT. *Id.* Thus, the proper focus of the Hawaii FIT should indeed be on "maximizing system penetration of new renewable energy resources." HECO Opening Brief at 4.

Maintaining electric system security and reliability and power quality ("system issues"), although a potential consideration, is not the purpose of an FIT. In a proceeding concerning the adoption of an FIT in Hawaii to achieve the FIT Policy Objectives, system issues are not deserving of consideration equal to achievement of the Rapid Adoption Objective. The HECO Companies appear to have provided no evidence from other jurisdictions demonstrating that system issues are or have been considered to be a purpose of an FIT, let alone a purpose equal to achievement of the rapid adoption of renewable energy. As explained in the Opening Brief, the Straw Tariff grants the HECO Companies' the right to deny interconnection or curtail generation under conditions such as those cited in Section 5 (Continuity of Service), Section 6 (Personnel and System Safety) and Section 7 (Prevention of Interference) of the Straw Tariff. Assuming the Commission adopts an FIT that includes these or similar standard provisions, the HECO Companies may properly rely upon them to address system issues.[15] System issues are therefore not the purpose of an FIT and are not deserving of consideration equal to that of achievement of the Rapid Adoption Objective.

The HECO Companies' suggestion that an FIT may result in "undesirable financial impacts to ratepayers" is unfounded and misleading. HECO Opening Brief at 4. The tariff-setting portion of this proceeding has not yet been undertaken. No rates have been

[15] Accordingly, Blue Planet submits the answer to the question, "What are the physical limitations on the utility's ability to purchase renewables?" set forth in the amended Statement of Issues in this proceeding is that there are no physical limitations to utility purchases, per se, because the utility may prevent energy from such purchases from entering the grid under safety and reliability provisions (such as Sections 5, 6, and 7). Limitations on utility purchase of renewables, if any, are therefore economic rather than "physical."

developed pursuant to the tariff-setting portion of this proceeding. The impact to Hawaii ratepayers from rates developed pursuant to the tariff-setting portion of this proceeding therefore remains to be determined. *See, e.g.*, HECO Opening Brief at 60 (describing tariff setting procedure to allow consultant to "come up with proposed new FIT rates"); DBEDT Opening Brief at 64 (estimates of cost impacts may be determined when FIT rates are set).

The present record includes evidence demonstrating an FIT is likely to benefit ratepayers. Solar Alliance ("SA") and the Hawaii Solar Energy Association ("HSEA") have proposed potential FIT rates. *See* Solar Alliance's and Hawaii Solar Energy Association's Opening Brief filed June 12, 2009 at 8-12. SA and HSEA have concluded their FIT rates "will not result in increased rates to the ratepayers in the long run." *Id.* at 12-14. The present record also includes the Intervenors' FIT ("Intervenors' FIT"), with proposed FIT rates, submitted by Zero Emissions Leasing, LLC ("ZEL"). The ZEL Opening Brief concludes that the Intervenors' FIT provides a net benefit of $1.26 billion to ratepayers. These analyses contradict and do not support the HECO Companies' repeated suggestion that an FIT may result in "undesirable financial impacts to ratepayers." HECO Opening Brief at 4.

Thus, for purposes of formulating General Principles at this stage of the proceeding, the record at this time establishes that an FIT is likely to benefit ratepayers and achieve what Blue Planet has termed the Ratepayer Benefit. The analyses by SA, HSEA and ZEL support and are consistent with the Energy Agreement's conclusion that "the benefits to Hawaii from using a feed-in tariff to accelerate renewable energy development (from lowering oil imports, increasing energy security, and increasing both jobs and tax base for the state), exceed the potential incremental rents paid to the renewable providers in the short term." Energy Agreement at 16-17 (emphasis added).

C. General Principle: All Commercially Viable and Emerging Technologies Should Be Eligible for the FIT.

As a general principle, the FIT should be designed to accommodate all commercially-viable and emerging technologies. The FIT should avoid "picking winners" by excluding certain technologies through this regulatory proceeding. Consistent with the recognized ability of FITs to foster and stimulate renewable energy development, market selection should play a prominent role in the determination of eligible technologies for the FIT. The FIT should also be designed to accommodate emerging technologies, given the rapid pace of development of clean energy technologies.

The HECO Companies propose limiting eligible technologies to solar photovoltaic ("PV"), concentrating solar power ("CSP"), in-line hydropower systems, and wind power systems up to and including 100 kW. HECO Opening Brief at 46. The HECO Companies propose limiting technologies to renewable resources that "do not require complex environmental and land use permitting which may impose significant uncertainties in project development time frames and costs." *Id.* at 43. However, the technologies proposed by the HECO Companies – despite the limited range and project sizes – may themselves trigger the same environmental and land use permitting requirements, and consequent delays and higher costs, as larger projects. It is unclear whether any such delays or higher costs are likely to be as great as those caused by the HECO Companies' current renewable energy procurement methods, such as the Framework for Competitive Bidding ("CBF")[16] and negotiated power purchase agreements. Finally, it is unclear whether such permitting requirements are likely to result in project development delays and higher costs for a given project. Evaluation of the risk of delays

[16] *See* Docket No. 03-0372, Decision and Order No. 23121 (Dec. 11, 2006).

and higher costs, if any, is properly left to the developer. The developer is in a better position than the HECO Companies to evaluate any such risk.

The HECO Companies also suggest technologies eligible for the FIT should be limited based upon Tariff Rule 14.H ("Rule 14.H") interconnection requirements. HECO Opening Brief at 43-44. As with permitting concerns, evaluation of the risk of higher costs due to interconnection studies, if any, is properly left to the developer. The developer is in a better position than the HECO Companies to evaluate any such risk. The HECO Companies further suggest technologies should be limited based upon "complex utility accounting issues." *Id.* at 44. The HECO Companies admit, however, that such issues "will ultimately be resolved in the course of other Commission proceedings or processes" and that supervisory control of facilities does not trigger lease accounting treatment. *Id.* at 45.

The FIT should therefore include biomass, biogas, geothermal energy, landfill gas, and sewage treatment plant gas in addition to solar PV, CSP, hydropower and wind. *See* Proposed FIT attached as Exhibit B to Opening Brief at 1-3. With regard to biomass, the HECO Companies state that they are "not necessarily opposed to the inclusion of biomass technologies on an appropriate size in the initial FIT design." HECO Opening Brief at n. 5. Biomass is not further discussed in the HECO Opening Brief because "[d]uring the panel hearings, testimony was received from representatives of HREA [Hawaii Renewable Energy Alliance] recommending against including biomass technologies in the initial FIT." *Id.* In its Opening Brief, however, HREA recommends that the Commission consider tentatively approving biomass subject to the Commission receiving sufficient evidence in support of FIT rates for biomass. Hawaii Renewable Energy Alliance's Post-Hearing Opening Brief filed June 12, 2009 at 15.

It is also noted that SA and HSEA suggest limiting FIT eligible technologies to solar PV, CSP, wind and hydro because "these are the only technologies that are 'shovel ready' at this time." SA and HSEA's Opening Brief at 7. Although the term "shovel ready" is subject to interpretation, biomass is a well established technology in Hawaii. *See, e.g.,* Alexander & Baldwin, Inc. doing business through its division Hawaiian Commercial & Sugar's response to HECO/HC&S-IR-5 filed Mar. 13, 2009 (biomass energy production "can provide significant amounts of reliable renewable energy and a properly structured FIT proposal could benefit existing biomass energy producers and create incentives for new biomass energy producers").

D. General Principle: Any Project Size, Quantity or Expenditure Limits That Impede Achievement of the Rapid Adoption Objective Must Be Avoided.

A paramount objective of an FIT is the achievement, to the greatest extent reasonably possible, of the Rapid Adoption Objective. FIT design must carefully weigh and consider any features that may impede achievement of this objective, or otherwise risk failure in advancing Hawaii's clean energy goals as prescribed by State laws and the Energy Agreement. The Proposed FIT includes island-wide grid penetration limits for intermittent renewable energy to avoid requiring the utility and ratepayers to pay for renewable energy from intermittent sources, if such sources do not displace generation from imported fuels due to the need to maintain such generation for purposes of system reliability. No other project size, quantity or expenditure limits are necessary or appropriate.

1. Project Size Limits.

Placing no limits on project sizes is most likely to achieve the Rapid Adoption Objective because it will encourage the maximum amount of renewable energy generation in the shortest time period. The Proposed FIT accordingly provides FIT rates for project sizes ranging from under 10 kW to 50 MW and over. *Id.* at 6-10. If project size limits are deemed necessary,

the limits should be in the range of 20 MW – far higher than the Straw Tariff's maximum of 500 kW.

The HECO Companies propose project sizes ranging from 100 kW to a maximum size of 500 kW. HECO Opening Brief at 46. In support of these limits, the HECO Companies allege increases in variable generation have resulted in HELCO and MECO experiencing "very real system issues." *Id.* at 26. Yet in the April 13-17, 2009 Panel Hearing in this matter, the HECO Companies admitted that their proposed project size limits and restrictions on eligible technologies are not based on quantitative risk to reliability. Tr. I-182:7-20; Tr. I-206:19-21.

As explained above, the Straw Tariff grants the HECO Companies' the right to deny interconnection or curtail generation under conditions such as those cited in Section 5 (Continuity of Service), Section 6 (Personnel and System Safety) and Section 7 (Prevention of Interference) of the Straw Tariff. Assuming the Commission adopts an FIT that includes these or similar standard provisions, the HECO Companies may properly rely upon them to address system issues.

The evidence presented by the HECO Companies in support of its systems issues allegations is disputed. For example, the validity of the HECO Companies' assertion that wind farms cause system issues on the Big Island has been challenged by Tawhiri Power, LLC ("Tawhiri") with regard to its Pakini Nui wind farm. In this proceeding, the HECO Companies have presented several figures in support of their systems issues allegations. One of these figures, Figure 3, is titled "Frequency Impact – Apollo" ("Figure 3"). (Apollo is a name formerly associated with the Pakini Nui wind farm.) The HECO Companies have submitted Figure 3 in a handout to participants in the January 20, 2009 Technical Workshop,[17] in response

[17] *See* Electronic mail from M. Chun (HECO) to Parties dated Jan. 20, 2009 with attached "Feed-in Tariff: System Integration Perspectives" dated Jan. 20, 2009 at 9.

to the Commission's Information Requests,[18] in their Final Statement of Position,[19] and in the HECO Opening Brief. *Id.* at 23. They argue Figure 3 illustrates frequency impacts from wind farms on the HELCO system.[20]

Tawhiri, which operates the Pakini Nui wind farm on the Big Island, disputes the HECO Companies' reliance on Figure 3 to establish frequency control problems. Tawhiri Power LLC's Opening Brief filed June 12, 2009 at 2. Tawhiri suggests the HECO Companies' use of Figure 3 in this proceeding constitutes the "repeated dissemination of misinformation." *Id.* at 3. According to Tawhiri, the frequency impacts depicted in Figure 3 are anomalous and resulted from a series of events on the second day of operation of the Pakini Nui wind farm when "[s]everal wind turbines entered a power down process as the result of protection issues. Those issues were quickly rectified and have not occurred since." *Id.* at 4.

Even assuming the HECO Companies allegations concerning systems issues are accurate and valid, the impact of such system issues on utility procurement of renewable energy remains unclear. For example, the HECO Companies admit that despite the alleged frequency impacts from wind generation on the Big Island, HELCO has "another 4.1 MW [of distributed generation] planned to be installed in the near future." HECO Opening Brief at 26.

Similarly, the HECO Companies suggest increasing the proposed size limit up to 5 MW is possible – indirectly calling into question the validity of their criteria and analyses in support of much lower project size limits. *Id.* at 5-6, 29, 40. A 5 MW project size limit is ten times larger than the 500 kW project size limit initially proposed by the HECO Companies. The HECO Companies have steadfastly argued the 500 kW project size limit is required due to permitting issues, system reliability and power quality issues, interconnection requirements, and

[18] HECO Companies' Responses to Commission's Information Requests dated Mar. 18, 2009, PUC-IR-6 at 5.
[19] Final Statement of Position of the HECO Companies' and Consumer Advocate filed Mar. 30, 2009 at 27.
[20] HECO Companies' Responses to Commission's Information Requests dated Mar. 18, 2009, PUC-IR-6 at 7.

utility accounting issues. *See, e.g.*, Joint Proposal at 5-8; Opening Statement of Position of HECO Companies and Consumer Advocate filed Feb. 25, 2009 at 5.

A ten-fold increase in the acceptable project size at this stage in the proceeding suggests, at a minimum, that the reasons given by the HECO Companies in support of their proposed project size limits are flexible and do not strictly compel these small limits. The HECO Companies' proposed PV Host Pilot Program,[21] which proposes utility-sponsored development of PV systems of 500 kW to 1 MW in size, similarly calls into question the binding nature of these alleged restrictions. Other criteria, such as achievement of the Rapid Adoption Objective, may properly be given priority over alleged reliability concerns that are not quantified and that can accommodate project sizes ten times larger than initially proposed.

The HECO Companies propose further consideration of a 5 MW project size limit and at the same time seek to impose onerous and unnecessary tariff-setting requirements. HECO Opening Brief at 5-6, 41-42. They propose "competitive solicitation" for resources up to 5 MW to provide pricing information "to be considered in the first FIT update two years" from establishment of the FIT. *Id.* at 41. The Commission should establish rates in this proceeding. It is unclear whether a competitive process will result in pricing information that is superior to pricing information that may be provided in this proceeding. Any potential advantage from such a competitive process is outweighed by the cost to ratepayers from delays in achieving the Ratepayer Benefit and the Rapid Adoption Objective.

Finally, the HECO Companies acknowledge that FIT projects at the maximum proposed project size of 500 kW for HECO and 250 kW for MECO and HELCO will require additional analysis per Rule 14.H. This undercuts limiting projects sizes to those not requiring a

[21] *See* Energy Agreement at 12-13; HECO, HELCO, and MECO's Application (Docket No. 2009-0098) filed April 30, 2009.

Rule 14.H study. Achievement of the Rapid Adoption Objective through 5 MW, 10 MW, or 20 MW and larger projects appears to outweigh the rationales for project size limits advanced by the HECO Companies.

2. Quantity or Expenditure Limits.

The Proposed FIT includes island-wide grid penetration limits for intermittent renewable energy to avoid requiring the utility and ratepayers to pay for renewable energy from intermittent sources, if such sources do not displace generation from imported fuels due to the need to maintain such generation for purposes of system reliability. Any FIT quantity limits should be consistent with these Penetration Limits as set forth in the Proposed FIT. *Id.* at 10.

The HECO Companies argue the Commission may establish expenditure limits based upon costs associated with the FIT program. For example, they argue "[r]eductions in procurement from fossil and other dispatchable generation" may be a cost of the FIT program: "If greater levels of lower-cost energy from dispatchable fossil or renewable generation are displaced as a result of a FIT program, then average energy costs will rise and the increase in average energy cost may become a significant cost associated with a FIT program." *Id.* at 88.

This statement is not supported by the present record in this proceeding. The present record includes analyses by intervenor parties (SA, HSEA, and ZEL) demonstrating an FIT is likely to benefit ratepayers. The Energy Agreement concluded that "the benefits to Hawaii from using a feed-in tariff to accelerate renewable energy development (from lowering oil imports, increasing energy security, and increasing both jobs and tax base for the state), exceed the potential incremental rents paid to the renewable providers in the short term." Energy Agreement at 16-17 (emphasis added).

The HECO Companies similarly suggest that expenditure limits may be justified if the FIT results in a higher unit price for fossil fuel due to a loss of volumetric discounts in fuel

purchases. HECO Opening Brief at 91. In other words, the HECO Companies propose that the Commission limit expenditures under the FIT, and thereby delay and limit the amount of renewable energy obtained from the FIT, based upon concerns related to continued economical consumption of the fossil fuels that are intended to be replaced by renewable sources procured using the FIT. The purpose of an FIT, however, is to "move more decisively and irreversibly away from imported fossil fuel for electricity and transportation and towards indigenously produced renewable energy." Energy Agreement at 1. In light of this overriding policy objective, expenditure limits are not justified based on costs associated with fossil fuel volumetric discounts.

Finally, it is noted that in their Opening Brief the HECO Companies apparently misstate the Commission's position on the issue of expenditure limits. The HECO Companies state that they are "in agreement with the Commission that it is reasonable to place appropriate limits on the amount of electricity to be purchased under a FIT[.]" *Id.* at 82 (emphasis added). In support of this contention, the HECO Companies cite to the Scoping Paper.[22] The Scoping Paper, however, does not conclude that expenditure limits are reasonable, but only that such limits "are reasonable to consider." HECO Opening Brief at 82, citing Scoping Paper at 8 (emphasis added).

3. Competitive Bidding Framework

The Framework for Competitive Bidding ("CBF")[23] should be effectively discontinued in conjunction with the Commission's adoption of an FIT, at least with regard to projects below 20 MW size on Oahu. A typical FIT such as the Proposed FIT is more likely than

[22] National Research Regulatory Institute, "Feed-in Tariffs: Best Design Focusing Hawaii's Investigation" dated Dec. 2008 ("Scoping Paper").
[23] *See* Docket No. 03-0372, Decision and Order No. 23121 (Dec. 11, 2006).

the CBF to achieve the Rapid Adoption Objective because a competitive bidding process is relatively costly and more time-consuming. *See,* Opening Brief at 23-25.

The HECO Companies acknowledge criticisms of the CBF but suggest that it "is indeed working." HECO Opening Brief at 15, citing Transcript ("Tr.") I-50: 7. The HECO Companies excerpt their testimony explaining how the CBF was finalized in December 2006, a 100 MW Request for Proposals ("RFP") was issued in Fall 2008 (nearly two years later), and power purchase agreements ("PPA") are intended to be presented for Commission review by the end of 2009. *Id.*

It is unclear whether any or all of the PPAs mentioned will be finalized and executed by the parties and approved by the Commission. As the Hawaii Renewable Energy Alliance testified in general with regard to renewable energy projects in negotiations with the utilities:

> The competitive bidding framework does include the exclusions that were grandfathered in [i.e., renewable energy projects excluded from the CBF], and we particularly find that – and I have to use the word appalling – out of maybe 17 projects, I think, maybe three have been brought to a conclusion.

Tr. I-59:15-20 (emphasis added).

Assuming the Commission completes its review in 2010, over three years will have passed since inception of the CBF and any developers have potentially obtained approved contracts. HELCO and MECO have not yet issued any RFPs pursuant to the CBF. A primary purpose of the FIT is to achieve the Rapid Adoption Objective. The uncertainty with regard to PPA execution and Commission approval, and the amount of time required by the CBF relative to an FIT, do not appear to support achievement of the Rapid Adoption Objective.

4. Ratepayer Impact

Overly-restrictive project size, quantity or expenditure limits that impede achievement of the Rapid Adoption Objective are not justified by potential short-term cost increases to ratepayers. The purpose of an FIT is to secure energy at a cost to ratepayers that is lower, over the long run, than the cost of imported oil. The Energy Agreement contemplates short term increases in the cost to ratepayers and has concluded that any such increases are acceptable in light of the economic and environmental benefits from an FIT that helps achieve the FIT Policy Objectives and goals of the Energy Agreement.

As explained above, the HECO Companies' insistent suggestion in this proceeding that an FIT may result in "undesirable financial impacts to ratepayers" is unfounded and misleading. HECO Opening Brief at 4. The tariff-setting portion of this proceeding has not yet been undertaken and the impact to Hawaii ratepayers from rates developed pursuant to that process therefore remains to be determined. In addition, the present record includes analyses by intervenor parties (SA, HSEA, and ZEL) demonstrating an FIT is likely to benefit ratepayers.

Accordingly, the Commission's General Principle on project size, quantity or expenditure limits on the FIT program should properly focus on achievement of the Rapid Adoption Objective. The HECO Companies' allusions to negative ratepayer impacts provide little or no basis for establishing FIT limits that hamper achievement of the Rapid Adoption Objective. To the contrary, the record establishes that FITs are likely to provide the Ratepayer Benefit, consistent with the conclusion reached by the parties in the Energy Agreement.

E. General Principle: The FIT Must Contain a Mandatory Interconnection Requirement and Must Compensate New Renewable Energy Generators for Curtailed Energy.

As a general principle, the FIT should contain a mandatory purchase requirement because it is fundamental to an FIT and it is most likely to achieve the Generator Security

Objective. Mandatory purchase requirements are fundamental to any FIT for the reasons given above in the description of the Generator Security Objective. The Proposed FIT requires the utilities to pay for all renewable generation. This right to payment held by the renewable energy generator follows from its right to access the grid. A mandatory purchase requirement that includes payment for curtailment is most likely to achieve the Generator Security Benefit because generators and their investors will have certainty that the FIT does not allow the HECO Companies to not pay them based upon curtailment.

The HECO Companies propose that the Commission expressly reserve its right to "suspend" the FIT program based on system issues or ratepayer impact. HECO Opening Brief at 8, 74. As explained above, alleged system issues provide no basis for limiting an FIT program and a proper FIT is likely to secure the Ratepayer Benefit. The HECO Opening Brief does not clarify whether the right reserved by the Commission in this regard would apply only to new projects seeking to proceed under the FIT or would also include existing projects under the FIT.

The FIT should exclude any right by the Commission to essentially terminate an existing FIT because such a right severely undercuts the Generator Security Objective and is therefore likely to hamper achievement of the Rapid Adoption Objective. Investors will lack certainty with regard to the FIT. Such certainty is an essential feature of an FIT. This lack of certainty will impact investment and likely raise the cost of capital.

F. General Principle: The Net Energy Metering Program Shall Remain Available to Customers.

Although a typical FIT may play a greater role than net energy metering ("NEM") in utility acquisition of renewable energy sufficient to achieve the Rapid Adoption Objective, it is reasonable to allow customers the choice between NEM and an FIT, as is reflected in the Proposed FIT. It is reasonable to give renewable energy generators a choice to enter into a

NEM agreement because it is required by section 269-102(a), Hawaii Revised Statutes, and continued availability of NEM may contribute to broader public support for achievement of the Rapid Adoption Objective. *See, e.g.,* Honolulu Advertiser, *State PUC raises limits on renewable energy* (Mar. 31, 2008) (citing "explosive growth" in solar systems due in part to availability of net energy metering).[24] As the HECO Companies testified at the Panel Hearing, there has been "significant growth," Tr. I-111:13-14, and a "ramping up" of net energy metering in 2007-08. Tr. I-109:25 – I-10:1.

Customers should be further allowed to undertake a hybrid of NEM and FIT, pursuant to which all kWh produced by the NEM customer up to the customer's annual aggregate usage is to be compensated by means of kWh credits (as under the NEM program), and production above the customer's annual aggregate use level is to be compensated on a kWh rate basis at the FIT rate.

The HECO Companies testified at the Panel Hearing that their current position, along with the Consumer Advocate, is to allow a NEM customer the choice between the FIT and NEM, but only for the first two years of the FIT program. Tr. I-143:20-22. Although the HECO Opening Brief likewise proposes that the NEM program continue to be offered until an FIT update is completed two years after FIT implementation, this proposal is qualified by a footnote reserving the HECO Companies "individual and collective rights to appropriately modify the [Straw Tariff] to account for the continuation of any aspects of the NEM program." HECO Opening Brief at 12 n. 4. This reservation suggests the HECO Companies continue to view the FIT program as a replacement for the NEM program, and vice versa, a view that is consistent with their initial position set forth in the Joint Proposal.

[24] Available at http://the.honoluluadvertiser.com/article/2008/Mar/31/bz/hawaii803310344.html.

The Commission should adopt a general principle with regard to the NEM program that helps achieve the FIT Policy Objectives, notably the Rapid Adoption Objective. A general principle allowing a renewable energy generator the choice of entering into an NEM agreement or an FIT agreement with the utility – without a two-year or any time restriction – is the best way to ensure the FIT interacts with the NEM program in a manner that supports achievement of the FIT Policy Objectives.

G. General Principle: The Commission Shall Complete Its Review the FIT Within Two Years of Adoption.

Mandatory Commission review should be completed within a period of not more than two years following implementation of the FIT. The HECO Companies propose that there should be an "initial" FIT followed by "regular updates." *See, e.g.*, HECO Opening Brief at 4-5. The HECO Companies propose that after initial review of the FIT is undertaken within two years of implementation of the program, subsequent reviews will be conducted every three years, "incorporating inputs from the Clean Energy Scenario Planning ("CESP") process." *Id.* at 72. Based the relatively lengthy Integrated Resource Planning process,[25] it is at best unclear whether the interaction between the CESP process and the FIT program will produce resource plans in a timely enough manner to promote achievement of the Rapid Adoption Objective. The Commission should therefore adopt an appropriately robust FIT in this proceeding rather than an incremental "initial" FIT that appears less likely to achieve the FIT Policy Objectives.

[25] *According to the HECO Companies, it took over five years from the opening of the initial Integrated Resource* Plan docket to establish a framework to the approval of HECO's first IRP plan. Joint Responses to Legal Questions Regarding Feed-in Tariffs of the HECO Companies and Consumer Advocate filed June 12, 2009 at 34 n. 35.

H. Legal Questions

Blue Planet affirms its responses to the legal questions set forth in the May 7, 2009 National Regulatory Research Institute Questions provided by the Commission,[26] as set forth in Appendix A to its Opening Brief. The following comments are provided in reply to Opening Briefs filed by other parties and in further support of Blue Planet's positions on these issues.

1. [VI.A][27] Does the Commission have authority to mandate that the utility procure a particular quantity of nonfossil electricity, exceeding the statutory RPS requirements? Can the Commission establish deadlines? What statutes grant this authority?

The Commission has authority to mandate that the utility procure a particular quantity of nonfossil electricity, exceeding the statutory RPS requirements, pursuant to HRS § 269-94, which states that the Commission "may provide incentives to encourage electric utility companies to exceed their renewable portfolio standards or to meet their renewable portfolio standards ahead of time, or both." *Id.* The Commission may have authority to establish deadlines for such procurement pursuant to HRS § 269-27.2(b) and HRS § 269-6(b). DBEDT suggests HRS § 269-27.2(c) grants authority for the Commission to impose deadlines by availing itself of its rate-setting powers under HRS § 269-16. DBEDT Opening Brief at 101.

The HECO Companies argue that the Commission does not have the authority, except as provided by the Renewable Portfolio Standards ("RPS") law,[28] to establish higher standards "backed by penalties." HECO Opening Brief at 30. The HECO Companies mention, however, that Act 155 amends the RPS law to allow the Commission, pursuant to HRS § 269-95(4), to revise the RPS standards. As the HECO Companies acknowledge, as amended HRS

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[26] Electronic mail from S. Kawasaki-Djou, Esq. to parties dated May 7, 2009 ("May 7, 2009 NRRI Questions").
[27] Section numbers in brackets correspond to the numbering in the May 7, 2009 NRRI Questions.
[28] HRS ch. 269, Part V *et seq.*

§ 269-95(4) may, as amended, be read to grant the Commission authority to increase the current RPS to the extent the revision is achievable and would aid in the effectiveness of the statute. HECO Opening Brief at 31.

Although there are competing arguments, Blue Planet submits that the better-reasoned answer to the question is that the language of HRS § 269-94 (allowing the Commission to provide incentives for utilities to exceed renewable portfolio standards) read in tandem with the language of HRS § 269-95(4) as amended by Act 155 (allowing for revision to the standard) provide the requisite authority for the Commission to mandate that the utility procure a particular quantity of nonfossil electricity exceeding the statutory RPS requirements.

2. **[VII.A.1] Does the phrase "maximize the reduction in fossil fuels" in Section 269-27.2(b) allow the Commission to establish a quantity goal, determine the rate necessary to satisfy that goal, and impose that rate regardless of how high the rate is and regardless of total cost?**

The HECO Companies' answer to this question is "No." HECO Opening Brief at 36. Blue Planet's position is that the phrase "maximize the reduction in fossil fuels" does allow the Commission to establish a quantity goal and determine the rate necessary to satisfy that goal. The Commission's determination of the rate and total cost are subject to the "just and reasonable" requirement of HRS § 269-16 and related provisions in HRS § 269-27.2.

3. **[VII.A.4] Can the Commission determine a required quantity for the utility to purchase, and then set the rate at whatever level is necessary to attract that quantity? Would such a rate necessarily satisfy the just and reasonable standard?**

In response to this question, DBEDT states that if the Commission were to first determine a target quantity of renewable energy for utility purchase and then set the FIT rate to reach that result, it would "betray the basic tenet of 'just and reasonable' rates by promoting an outcome which may not be in the best public's best interest." DBEDT Opening Brief at 107-08. For the sake of clarity, Blue Planet submits that the Commission may in this proceeding establish

rates designed to achieve the FIT Policy Objectives, including the Rapid Adoption Objective, assuming that as part of this proceeding the Commission also makes the requisite determination that such rates are "just and reasonable." The Commission may also in this proceeding establish a target quantity of renewable energy as part of the FIT program. Blue Planet further concurs with the HECO Companies' suggestion that rates and quantities may be established pursuant to the "set aside" concept, as further described by the HECO Companies in their submission. *See* Joint Statement on Legal Questions at 11-12.

III. CONCLUSION

The HECO Companies' Joint Proposal and Straw Tariff do not occupy the "middle ground" in this proceeding. With them Hawaii is likely to "remain at the starting line" by failing to meaningfully increase system penetration of new renewable resources. The Energy Agreement correctly calls for bold action from recognition that "[t]he very future of our land, our economy and our quality of life is at risk" if Hawaii's dangerous dependence on imported oil is not alleviated. Energy Agreement at 1. Blue Planet respectfully submits that its proposed General Principles and Proposed FIT strike the proper balance between the competing concerns in this proceeding. Consistent with the FIT Policy Objectives, such an FIT may be capable of securing the rapid adoption of the maximum feasible amount of renewable energy, thereby providing the economic and environmental benefits to Hawaii's people from the swift transition to a clean energy economy.

DATED: Honolulu, Hawaii, June 26, 2009.

DOUGLAS A. CODIGA
Attorney for Blue Planet Foundation

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE

STATE OF HAWAII

In the Matter of PUBLIC UTILITIES COMMISSION Instituting a Proceeding to Investigate the Implementation Of Feed–in Tariffs.	DOCKET NO. 2008-0273

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this date a copy of the foregoing document was duly served upon the following individuals by placing a copy of same in the United States Mail, postage prepaid, or by electronic mail, as follows:

CATHERINE P. AWAKUNI EXECUTIVE DIRECTOR DEPT. OF COMMERCE & CONSUMER AFFAIRS DIVISION OF CONSUMER ADVOCACY P.O. Box 541 Honolulu, HI 96809	2 copies by U.S. Mail and Electronic Service
DEAN MATSUURA MANAGER REGULATORY AFFAIRS HAWAIIAN ELECTRIC COMPANY, INC. P.O. Box 2750 Honolulu, HI 96840-0001	Electronic Service
JAY IGNACIO PRESIDENT HAWAII ELECTRIC LIGHT COMPANY, INC. P. O. Box 1027 Hilo, HI 96721-1027	Electronic Service

EDWARD L. REINHARDT
PRESIDENT
MAUL ELECTRIC COMPANY, LTD.
P. O. Box 398
Kahului, HI 96732

Electronic Service

THOMAS W. WILLIAMS, JR., ESQ.
PETER Y. KIKUTA, ESQ.
DAMON L. SCHMIDT, ESQ.
GOODSILL, ANDERSON QUINN & STIFEL
Alii Place, Suite 1800
1099 Alakea Street
Honolulu, HI 96813
Counsel for HECO Companies

Electronic Service

ROD S. AOKI, ESQ.
ALCANTAR & KAHL LLP
120 Montgomery Street, Suite 2200
San Francisco, CA 94104
Counsel for HECO Companies

Electronic Service

THEODORE PECK
DEPARTMENT OF BUSINESS, ECONOMIC
DEVELOPMENT,
AND TOURISM
State Office Tower
235 South Beretania Street, Room 501
Honolulu, HI 96813

Electronic Service

ESTRELLA SEESE
DEPARTMENT OF BUSINESS, ECONOMIC
DEVELOPMENT,
AND TOURISM
State Office Tower
235 South Beretania Street, Room 501
Honolulu, HI 96813

Electronic Service

MARK J. BENNETT, ESQ.
DEBORAH DAY EMERSON, ESQ.
GREGG J. KINKLEY, ESQ.
DEPARTMENT OF THE ATTORNEY GENERAL
425 Queen Street
Honolulu, HI 96813
Counsel For DBEDT

CARRIE K.S. OKINAGA, ESQ.
GORDON D. NELSON, ESQ.
DEPT. OF THE CORPORATION COUNSEL
CITY AND COUNTY OF HONOLULU
530 South King Street, Room 110
Honolulu, HI 96813
Counsel for City and County of Honolulu

Electronic Service

LINCOLN S.T. ASHIDA, ESQ.
WILLIAM V. BRILHANTE JR., ESQ.
MICHAEL J. UDOVIC, ESQ.
DEPT. OF THE CORPORATION COUNSEL
COUNTY OF HAWAII
101 Aupuni Street, Suite 325
Hilo, HI 96720
Counsel for County of Hawaii

Electronic Service

MR. HENRY Q CURTIS
MS. KAT BRADY
LIFE OF THE LAND
76 North King Street, Suite 203
Honolulu, HI 96817

Electronic Service

MR. CARL FREEDMAN
HAIKU DESIGN & ANALYSIS
4234 Hana Highway
Haiku, HI 96708

Electronic Service

MR. WARREN S. BOLLMEIER II
PRESIDENT
Hawaii Renewable Energy Alliance
46-040 Konane Place, #3816
Kaneohe, HI 96744

Electronic Service

MR. MARK DUDA
PRESIDENT
HAWAII SOLAR ENERGY ASSOCIATION
P.O. Box 37070
Honolulu, HI 96837

Electronic Service

MR. RILEY SAITO
THE SOLAR ALLIANCE
73-1294 Awakea Street
Kailua-Kona, HI 96740

Electronic Service

MR. JOEL K. MATSUNAGA
HAWAII BIOENERGY, LLC
737 Bishop Street, Suite 1860
Pacific Guardian Center, Mauka Tower
Honolulu, HI 96813

Electronic Service

KENT D. MORIHARA, ESQ.
KRIS N. NAKAGAWA, ESQ.
SANDRA L. WILHIDE, ESQ.
MORIHARA LAU & FONG LLP
841 Bishop Street, Suite 400
Honolulu, HI 96813
Counsel for Hawaii Bioenergy, LLC

Electronic Service

MR. THEODORE E. ROBERTS
SEMPRA GENERATION
101 Ash Street, Hq. 12
San Diego, CA 92101

Electronic Service

CAROLINE BELSOM
VICE PRESIDENT/GENERAL COUNSEL
Kapalua Land Company, Ltd.,
a wholly owned subsidiary of
MAUI LAND & PINEAPPLE COMPANY, INC.
c/o 200 Village Road
Lahaina, HI 96761

Electronic Service

KENT D. MORIHARA, ESQ.
KRIS N. NAKAGAWA, ESQ.
SANDRA L. WILHIDE, ESQ.
MORIHARA LAU & FONG LLP
841 Bishop Street, Suite 400
Honolulu, HI 96813
Counsel for Maui Land & Pineapple Company, Inc.

Electronic Service

MR. ERIK KVAM
CHIEF EXECUTIVE OFFICER
BLUE PLANET LEASING LLC
2800 Woodlawn Drive, Suite 131
Honolulu, HI 96822

Electronic Service

MR. JOHN N. REI
SOPOGY INC.
2660 Waiwai Loop
Honolulu, HI 96819

GERALD A. SUMIDA, ESQ.
TIM LUI-KWAN, ESQ.
NATHAN C. NELSON, ESQ.
CARLSMITH BALL LLP
ASB Tower, Suite 2200
1001 Bishop Street
Honolulu, HI 96813
Counsel for Hawaii Holdings, LLC, dba First Wind Hawaii

Electronic Service

MR. CHRIS MENTZEL
CHIEF EXECUTIVE OFFICER
CLEAN ENERGY MAUI LLC
619 Kupulau Drive
Kihei, HI 96753

Electronic Service

HARLAN Y. KIMURA, ESQ.
Central Pacific Plaza
220 South King Street, Suite 1660
Honolulu, HI 96813
Counsel for Tawhiri Power LLC

Electronic Service

SANDRA-ANN Y.H. WONG, ESQ.
Attorney At Law, A Law Corporation
1050 Bishop Street, #514
Honolulu, HI 96813
Counsel for Alexander & Baldwin, Inc., through its division, Hawaiian Commercial & Sugar Company

Electronic Service

DATED: Honolulu, Hawaii, June 26, 2009.

DOUGLAS A. CODIGA
Attorney for Blue Planet Foundation